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IN THE

Supreme Court of the United States

October Term, 1949

No. 715

JAMES MARTIN, LOTTIE MAY MARTIN, and THE SMOOT SAND AND GRAVEL CORPORATION, *Petitioners,*

v.

UNITED STATES OF AMERICA.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

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CONTENTS

PAGE

Introduction 1

Opinions Below 2

Jurisdiction 2

Summary Statement of the Matter Involved..... 2

Questions Presented 8

Reasons for Granting the Writ 10

1. The Question of Respondents' Right to Compensation for Their Filled Land Under the Constitution Is of General Importance and Should Be Settled 10

   The Court of Appeals did not give proper effect to the Greenleaf-Johnson Lumber Company and the Chicago Milwaukee St. P. & P. cases 12

2. Other Questions of General Importance Were Incorrectly Decided When the District Court Held That the Government as a Matter of Law Had a Proprietary Title to the Land Underlying the Potomac and Rejected Defendants' Evidence of Title to the Channel, Subject to the Public Rights of Fishery and Navigation 15

3. Another Important Question Involves the Construction of the Federal Statute of 1912.... 17

4. There Is Also an Important Question Here as to Whether the Modern Tendency of the Circuit Courts of Appeal to Shorten Their Opinions Has Gone Too Far 18

Conclusion 19

Appendix 20

CASES

Appleby v. New York, 271 U. S. 364, 46 S. Ct. 569, 70 L. Ed. 992 16

Bishop Co. v. Curran, et al., 30 R. I. 504 11

PAGE

Boston v. LeCraw, 17 How. 426, 15 L. Ed. 118 11
Brown v. Kennedy, 5 H & J 195 (156) 12
Carli v. Stillwater Ry. Co., 28 Minn. 373, 10 N. W. 205, 41 Am. Rep. 290 12
C & D Canal v. U. S., 233 Fed. 926 17
Dawson v. Broome, 24 R. I. 359 11
D. C. v. Cropley, 23 App. D. C. 232 16
Dutton v. Strong, 1 Black 23, 17 L. Ed. 29 11
Greenleaf-Johnson Lumber Co. v. Garrison, 237 U. S. 251, 35 S. Ct. 551, 59 L. Ed. 939 ..... 12, 13
Guaranty Trust Co. v. U. S., 304 U. S. 126, 58 S. Ct. 785, 82 L. Ed. 1224 17
Heiney v. Nolan, 67 A. 1008, 75 N. J. Law 397 12
Illinois Central R. Co. v. Ill., 146 U. S. 387, 36 L. Ed. 1018 ..... 11, 15
Lewis Blue Point Oyster Co. v. Briggs, 229 U. S. 82, 33 S. Ct. 679, 57 L. Ed. 1083 16
Lockwood v. N. Y. & N. H. R. Co., 37 Conn. 387 12
Matter of New York, 217 N. Y. 1 12
Miller v. Mendenhall, 43 Minn. 95, 44 N. W. 1141, 19 Am. St. Rep. 219, 8 L. R. A. 89 12
Monongahela Navigation Co. v. U. S., 148 U. S. 312, 37 L. Ed. 463 13
Nickols v. Lewis, 15 Conn. 139 12
Peo. v. Cal. Fish Co., 166 Cal. 576, 138 P. 79 12
Philadelphia Co. v. Stimson, 223 U. S. 605, 56 L. Ed. 570, 32 S. Ct. 340 ..... 14, 16
Portsmouth Co. v. U. S., 260 U. S. 327, 43 S. Ct. 135, 67 L. Ed. 287 18
Potomac Steamboat Co. v. Upper S. B. Co., 109 U. S. 672, 3 S. Ct. 445, 4 S. Ct. 15, 27 L. Ed. 1070 11
Scranton v. Wheeler, 179 U. S. 141, 21 S. Ct. 48, 45 L. Ed. 126 15
Shively v. Bowlby, 152 U. S. 1, 14 S. Ct. 548, 38 L. Ed. 331 15
Smoot Sand & Gravel Corp. v. Washington Airport, 283 U. S. 348, 51 S. Ct. 474, 75 L. Ed. 1109 15
Union Dept. Co. v. Brunswick, 31 Minn. 297, 17 N. W. 626, 47 Am. R. 789 12
U. S. v. Belt, 47 F. Supp. 239 17
Same, 79 U. S. App. D. C. 87, 142 F. (2d) 761 ..... 3, 4, 11, 14
U. S. v. Cansby, 328 U. S. 256, 66 S. Ct. 1062, 90 L. Ed. 1206 18

PAGE

U. S. v. Chandler-Dunbar Co., 229 U. S. 53, 33 S. Ct. 667, 57 L. Ed. 1063 16
U. S. v. Chaves, 159 U. S. 452, 16 S. Ct. 57, 40 L. Ed. 215 17
U. S. v. Chavez, 175 U. S. 509, 44 L. Ed. 255, 20 S. Ct. 159 17
U. S. v. Chicago, Milwaukee, St. Paul and Pacific R. R. Co., 61 S. Ct. 772, 312 U. S. 592, 85 L. Ed. 1064 12
U. S. v. Fullard Leo, et al., 133 F. (2d) 743, aff. 331 U. S. 256, 67 S. Ct. 1287, 91 L. Ed. 1474 17
U. S. v. Groen, et al., 72 Fed. Supp. 713 2
U. S. v. Martin, et al., 177 F. (2d) 733 2
U. S. v. Maxwell Land Grant Co., 121 U. S. 325, 7 S. Ct. 1015, 30 L. Ed. 949 17
U. S. v. Morris, 174 U. S. 196, 43 L. Ed. 946 3
U. S. v. River Rouge Co., 269 U. S. 411, 70 L. Ed. 339, 46 S. Ct. 144 11
U. S. v. Stinson, 197 U. S. 200, 49 L. Ed. 724, 25 S. Ct. 426 17
Yates v. Milwaukee, 77 U. S. (10 Wall.) 497, 19 L. Ed. 984 11

STATUTES

Act of 1912 authorizing this suit, 37 Stat. 93..... 7, 9, Appendix
Judiciary and Judicial Procedure, 28 U. S. C. 1254(1).. 2
Maryland Act Ratifying Cession, 1791, D. C. Code, 1940 Ed., p. XXIX, Sec. 2 4
Same, Sec. 3 6
Maryland Act of 1793, D. C. Code, 1940 ed., p. XXXI, Sec. 1 6
Rivers and Harbors Act of March 3, 1899, T. 33, U. S. C. A., Sec. 404 ..... 5, 10, 13, 19

In The

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No.

James Martin, Lottie May Martin, and The Smoot Sand and Gravel Corporation, *Petitioners,*

v.

United States of America.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

To the Honorable, the Chief Justice and the Associate Justices of the Supreme Court of the United States:

Your petitioners, James Martin, Lottie May Martin and the Smoot Sand and Gravel Corporation, a corporation, acting by and through their attorneys, Daniel Partridge III and Milton D. Campbell, respectfully pray for a writ of certiorari directed to the United States Court of Appeals for the District of Columbia Circuit to review those

portions of the decision and judgment of that Court in the consolidated cases of *United States of America, Appellant* v. *James Martin, et al.*, and *Martin, et al.* v. *the United States,* numbered 9781 and 9782 in said Court, and dated October 31, 1949, which held that the reclaimed land of petitioners (defendants) could be taken by the United States for purposes of navigation without compensation under the Fifth Amendment, that there was no error involved in the valuation hearing held in this case, and which affirmed paragraphs eight (8) and eleven (11) of the Final Judgment of the United States District Court for the District of Columbia (R. 124 and 125) and to review said paragraphs of said Final Judgment.

Opinions Below

The opinion of the District Court (R. 97) is reported in *United States* v. *Groen, et al.,* 72 Fed. Supp. 713. The opinion of the United States Court of Appeals for the District of Columbia Circuit (R. 736-738) is reported at 177 F. (2d) 733.

Jurisdiction

The judgment of the Court of Appeals was rendered on October 31, 1949 (R. 739). By order of the Chief Justice, dated January 25, 1950, the time for filing this petition was extended to March 30, 1950 (R. 741). The jurisdiction of this Court is invoked under 28 U. S. C. 1254 (1).

Summary Statement of the Matter Involved

1. The United States (sometimes called plaintiff in this petition), filed the instant suit in 1913 in the form of a bill in equity claiming a fee simple title to all the land in Square E of 664, in the District of Columbia. This square

lies at the foot of South Capitol Street on the Anacostia or Eastern Branch of the Potomac River. The Dermott map made about 1795 (R. brown envelope and Vol. V, Ex. 16) shows the square on a small scale and Plfs. T-35 Vol. V is a plat of the square on a large scale as it was in 1929. The United States claimed title by this bill to quiet title in the same way a private person would do. (R. 2-8) Petitioners Lottie May Martin, et al. (sometimes called defendants in this petition), answered denying the claim of the United States to title and claiming title in themselves (R. 9-28, 56-58).

2. The historical background of the City of Washington is recited in the case of *United States* v. *Rigel O. Belt,* 79 U. S. Appeals D. C. 87, 142 F. (2d) 761, which involved Square E of 666, the square next to Square E of 664 and in greater detail in the majority opinion in *United States* v. *Morris,* 174 U. S. 196, 43 L. Ed. 946, and the dissenting opinion in that case beginning at 174 U. S. 291, 43 L. Ed. 980. It will be seen that the transfer of the land in the District of Columbia was accomplished by conveyances by the original proprietors in trust to lay out the City, convey the streets to Commissioners of Public Buildings and Grounds appointed by President Washington, for the use of the United States and divide the lots between the United States and the original proprietors, who received part of their land back as their only compensation for the conveyances. Many of the lots received by the United States were sold to provide money for the public buildings. The transfer of the new lots to the original proprietors and the purchases of the lots sold was accomplished through these Commissioners. The Commissioners transferred by allotments which were given the force and effect of conveyances. Maryland in 1791 ceded its interest in the District of Columbia to the United States, by the Act of Cession, but Maryland was careful not to transfer any rights which would prejudice the pri-

vate property rights of citizens of the District. Section 2 of that Act read in part as follows:

> "*Provided,* That nothing herein contained shall be so construed as to vest in the United States any right of property in the soil as to affect the rights of individuals therein otherwise than the same shall or may be transferred by such individuals to the United States."

(D. C. Code, 1940 Edition,[1] p. XXIX) Construed in *United States* v. *Rigel O. Belt, supra,* 79 U. S. App. D. C. at pp. 92 and 93.

3. The Deeds in Trust after providing for the conveyance of the streets provided in part:

> "that one-half the quantity of the said lots, pieces and parcels hereby bargained and sold shall be assigned and conveyed as near the old situations as may be to" (the original proprietor who was the grantor) "in fee simple, so that he shall have made up to him one-half of his former quantity and in as good a situation, * * *"

and went on to say that if one-half of the original proprietor's quantity could not be assigned to him in like situation to his old lots then he should receive other ground in the City by agreement between him and the Commissioners and if the original proprietor and the Commissioners should disagree then the original proprietor should receive full compensation in money. The Deeds in Trust contained the usual provisions of such deeds including the provision that all parties would execute any further deeds to carry out its true intent. (R. 66-67, see pars. 9 (b) and (c), 462-483).

4. The entire title to the lands involved in this action with all appurtenant rights vested through these deeds in trust in the Commissioners appointed by President

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[1] All references to the D. C. Code herein are to the 1940 edition.

Washington pursuant to Act of Congress for the purpose of laying out the City and for the division of the lots with the original proprietors (R. 67, par. 10(a). Consequently plaintiff and defendants claim through a common source of title.

5. These lots in Square E of 664 were allotted in exchange for lots formerly in the little town of Carrollsburg. The Carrollsburg lots had riparian rights and had been conveyed to the trustees under the above-mentioned deeds in trust. The United States concedes that respondents' predecessors in title received their lots in Square E of 664 with riparian rights (R. 74, par. 20(c), 80, 117).

6. Defendants' riparian rights were, however, subject to the control of the Congress over the river for purposes of navigation. In the exercise of this control the Congress delegated to the Secretary of War the power to establish harbor lines by the Rivers and Harbors Act of March 3, 1899 (T. 33, U. S. C. A. Sec. 404). He marked the banks of the river by a bulkhead line which runs in front of Square E of 664 (R. Vol. V, Ex. T-20 and Vol. IV, Ex. 18). This line defines the limit to which the riparian owners may fill without a permit (Said Ex. 18 and R. 357, 358, 362, 364-366). The river between high water mark and the channel was too shallow to be navigable in fact and the owners filled to the bulkhead line (R. 232 and 233). The District Court visited the property before rendering its opinion and it was then apparent that the entire water front in the vicinity was filled substantially to the bulkhead line (R. Vol. V Plfs. Ex. 2 and Vol. IV Defs. Ex. I-4).

7. The District Court held that these riparian rights included the right of access to the channel of the river and the right to improve that access by filling and wharfing (R. 108-110); that the establishment of the bulkhead line operated as a license or invitation to fill out to that line (R. 110 and 111); that when defendants accepted this invitation they acquired fee simple ownership of the re-

claimed land (R. 122), which could only be taken away for public purposes, upon due process of law and with just compensation (R. 113). The Court of Appeals affirmed, except as to the just compensation. That Court held that the Government could take the reclaimed land for purposes of navigation without compensation to its owners.

8. Lots 1 to 8, inclusive, Square E of 664 were allotted by the Commissioners to defendants' progenitors in title (R. 38, 39 & 73, par. 18(a), 96 & 97) by lot and square number (R. 181-183). The allotments were given the force and effect of reconveyances under the Deeds in Trust above mentioned by Section 3 of the Maryland Act Ratifying Cession of 1791 (D. C. Code, p. XXIX) and Section 1 of the Maryland Act of 1793 (D. C. Code, p. XXXI).

9. Defendants and their predecessors in title have been in possession of the land as long as the memory of living man (R. 160, 230, 234, 378, 447, 448, 485, 492, Vol. V, Plfs. Ex. T-39). There was no evidence that the Government had ever been in possession. The District Court rejected deeds describing lots 7 and 8 as extending to the channel of the River dated in 1802 and 1863 (R. 440-447) offered as evidence of possession, which recited substantial consideration, and rejected tax certificates showing real estate taxes to be paid (R. 438-452) and rejected other evidence of possession (R. 51, 230), and held that the burden of proof was on the defendants. Defendants attacked this ruling in a cross-appeal, but the Court of Appeals ignored that attack.

10. Early maps show the lines of the lots extending well past the high water line in 1794 (R. Vol. V, Ex. 5, Vol. IV, Exs. 12 and 16). Early records of the Commissioners' Office dated in the 1790's produced from the National Archives of the United States describing the lots as extending to the channel were rejected by the District Court though their authenticity was admitted (R. 139, 140) and there was evidence of the Commission-

ers' direction to prepare some of them (R. 218). These records included original plats and certificates of the early surveyors platting the lots to the channel and certifying that they extended to the channel. (R. Vol. IV, Exs. 25, 27, 30, 31, 32, 33, 34). One certificate of a surveyor was that the lot lines extended to the channel as appears from the original plans and proceedings in the Commissioners' Office dated June 26, 1794 (R. Vol. IV, Ex. 30) and that is the date of the recorded allotment describing the lots only by lot and square number (R. 181-183).

11. The statute of 1912 authorizing the filing of the suit is annexed hereto as an Appendix. Plaintiff contended that the statute required a valuation hearing so that the Congress could appropriate the value found by the Court and acquire the land. Defendants contended that there should be no valuation hearing. The District Court held the valuation hearing and therein rejected evidence offered by defendants of the reproduction value of the wharf (R. 516-520, Vol. IV, Exs. A and B), its fair market value (R. 549-551); that a witness had a bona fide offer for two comparable lots across the street at a price considerably higher than the square foot valuation found by the Court (R. 521-528, 543, 544 and 728-731); of advantages of the property because of its water front location (R. 524 and 525) and the scarcity of privately owned waterfront land in the area (R. 560 and 561); and a map of the waterfront which had been received in evidence at the title hearing offered during argument on the grounds that it had not been offered in evidence at the valuation hearing (R. 702). The District Court also received the following evidence over the objection of defendants: evidence of the sale of comparable properties without any showing of lack of compulsion (R. 582, 583, 620, 621, 623), one seven years before with no adequate evidence of comparability (R. 562-564); hearsay evidence (R. 624 and 625, 715-718); and verbal evidence of a comparable sale without producing the contracts or check (R. 582, 583).

12. Two real estate experts testified for the plaintiff that the property was worth about $169,000 and $176,000 respectively (R. 661, 664, 683, 684, 685). They did not take riparian rights or a very recent sale of the adjoining square into consideration (R. 571, 648-655, 665, 666, 676, 689, 702, 703 and 732). There were well over a hundred linear feet of steel bulkheading in a metal pier on lots 4 and 5 (R. Vol. IV, H and I-4) and one of plaintiff's witnesses testified that the cost of such bulkheading was $400.00 per linear foot (R. 696 and 697). There was no prayer for the valuation in petitioners' bill of complaint (R. 7 & 8). There was no act of taking by the Government, no indication of any kind whether or not the property would be taken and no allegation or proof that it was needed for any public purpose.

13. Three real estate experts testified for defendants to approximate total values ranging from $251,000.00 to $475,000.00 (R. 523, 524, 549-554, 589-592).

14. The District Court found lots 4 and 5 to be worth about $29,000.00 and the remaining lots about $135,000.00 with no allowance at all for the wharf or the steel bulkheading (R. 121-124). This finding in the aggregate was less than the valuation of either one of the plaintiff's witnesses.

15. Defendants attacked the holding and results of the valuation hearing in their cross-appeal and the Court of Appeals ignored their contentions except to say that it found no error in that hearing.

Questions Presented

I. Where the Congress acting through the Secretary of War has defined the bank of a navigable river in the District of Columbia by establishing a bulkhead line and thereby invited defendants to exercise their riparian

rights by filling to that line and defendants have done so can Congress thereafter take the filled land for purposes of navigation without making compensation to its owners under the Fifth Amendment to the Constitution of the United States?

II. (a) Can title to land underlying a navigable river be held by private citizens subject to the public rights of navigation and fishery?

(b) Did the Act of Cession of Maryland of 1791 pass any right to the United States in the soil underlying the Potomac River which affected the rights of individuals therein?

(c) Are the rights of the United States to the navigable Potomac under the Commerce Clause of the Constitution such as to make the evidence of defendants of their possession and that their lots extended to the channel of the Potomac, subject to the public rights in any submerged land, inadmissable?

(d) Was this evidence inadmissable on any grounds?

(e) In this action in which the United States claimed title as a private plaintiff would, was the burden of proof on defendants to show that the action of the Commissioners in allotting to the channel, taken over a century before suit was filed, was authorized, or was there a presumption that they were authorized to act as they did?

(f) Did defendants prove that their lots extended to the channel of the river, subject to the public rights of navigation and fishery in any shallow submerged lands?

III. (a) Did the Courts properly construe the Act of Congress of 1912 when they held that it required a valuation hearing as a part of this cause?

(b) Did the Courts' requirement of a contested valuation hearing and their failure to hold that such hearing did not authorize Congress to take for the value found, violate the Fifth Amendment?

(c) Did the Courts err in rejecting and allowing evidence in the valuation hearing?

Reasons for Granting the Writ

1. THE QUESTION OF RESPONDENTS' RIGHT TO COMPENSATION FOR THEIR FILLED LAND UNDER THE CONSTITUTION IS OF GENERAL IMPORTANCE AND SHOULD BE SETTLED.

The Rivers and Harbors Act of 1899 is national in scope. Throughout the United States there are thousands of acres of land on navigable waters which have been filled with the consent of the States and the United States and improved by billions of dollars worth of warehouses, tanks, and other improvements. In some of the large cities like San Francisco and New York large office buildings have been built on reclaimed land once below the high-water mark of the navigable water. This decision not only casts a cloud on the title of defendants' reclaimed land which decreases its value, but casts the same cloud on all the land of like character in the United States and its possessions.

The decision is also against the public interest and if allowed to stand will hamper commerce and retard the improvement of land on navigable waters. Our waters, unlike those in England, are bordered by thousands of acres of shallow waters and marsh over which the tide ebbs and flows. It facilitates navigation and commerce to acquire access to navigable waters by filling in this type of land. To bulkhead and fill is an expensive process. Many will be unwilling to go to that expense or the expense of building a costly grain elevator or coal bunker on filled land if the Government can take it without compensation.

With this cloud on the title what lender would make a loan secured on filled land on navigable waters.

The decision of the Courts below that defendants' riparian rights included the right of access to the channel is supported by reason, the authorities and by public necessity. Those rights were subject to the regulation of both the State and Federal Governments in the States and the Federal Government in the District of Columbia where the two are as one. When the Secretary of War acting under the authority of Congress to regulate navigation established the bulkhead line here, he in effect said "You riparian owners are entitled to bring your fast land forward to this line. This line is the bank of the river beyond which is the bed of the river and public water. You are invited to fill to the line and are no longer entitled to accretion beyond the line as we will dredge it away." And when these riparian owners accepted that invitation and filled to that line the bank of the river and the fast land were in effect extended both practically and in the eyes of the law.

Many cases support the above, including the following:

United States v. *River Rouge Co.*, 269 U. S. 411, 412, 416-418, 70 L. Ed. 339, 46 S. Ct. 144.

Illinois Central R. Co. v. *Ill.*, 146 U. S. 387, 36 L. Ed. 1018, 1040 and cases cited.

Potomac Steamboat Co. v. *Upper S. B. Co.*, 109 U. S. 672, 686, 3 S. Ct. 445, 4 S. Ct. 15, 27 L. Ed. 1070.

Yates v. *Milwaukee*, 77 U. S. (10 Wall) 497, 19 L. Ed. 984.

Dutton v. *Strong*, 1 Black 23, 17 L. Ed. 29.

Boston v. *LeCraw*, 17 How. 426, 15 L. Ed. 118.

United States v. *Belt*, supra.

Dawson v. *Broome*, 24 R. I. 359, 368.

Bishop Co. v. *Curran, et al*, 30 R. I. 504, 508.

Peo. v. *Cal. Fish Co.,* 166 Cal. 576, 599, 600, 138 P. 79.

Matter of New York, 217 N. Y. 1, 17.

Miller v. *Mendenhall,* 43 Minn. 95, 44 N. W. 1141, 19 Am. St. Rep. 219, 8 L. R. A. 89.

Carli v. *Stillwater Ry. Co.,* 28 Minn. 373, 10 N. W. 205, 41 Am. Rep. 290.

Brown v. *Kennedy* (High Court of Chancery of Md. 1821), 5 H & J 195 (156), 202.

Nickols v. *Lewis,* 15 Conn. 139 (1870).

Lockwood v. *N. Y. & N. H. R. Co.,* 37 Conn. 387.

Heiney v. *Nolan,* 67A. 1008, 75 N. J. Law 397.

Union Dept. Co. v. *Brunswick,* 31 Minn. 297, 302, 17 N. W. 626, 47 Am. R. 789.

THE COURT OF APPEALS DID NOT GIVE PROPER EFFECT TO THE GREENLEAF-JOHNSON LUMBER COMPANY AND THE CHICAGO MILWAUKEE ST. P. & P. CASES.

In *United States* v. *Chicago Milwaukee, St. Paul and Pacific R. R. Co.,* 61 S. Ct. 772, 312 U. S. 592, 85 L. Ed. 1064, there was no question of rights acquired by filling to a bulkhead line at the invitation of the United States. To improve the navigation of the Mississippi the Government constructed a series of locks and dams which raised the level of the river and damaged the embankment of the railroad. The part of the railroad embankment in question was in the bed of the river between high and low water mark. The United States had not given its consent to the construction of the embankment.

The case of *Greenleaf-Johnson Lumber Co.* v. *Garrison,* 237 U. S. 251, 35 S. Ct. 551, 59 L. Ed. 939, is not in point. The lumber company erected the wharf in question in 1877, long before any harbor lines were established by anyone. The wharf was in the form of two arms which

extended far out into the river, with a line of piles and earth partially closing the space between (see map opposite p. 42 of the record in the case). There was river within the enclosure and on three sides. In 1890 the state established a pierhead line which ran across in front of the wharf and the Secretary of War adopted this line. In 1911 the Secretary of War pursuant to the Rivers and Harbors Act of 1899 fixed the pierhead line 200 feet behind the end of the wharf declaring that the wharf was an obstruction to navigation and that gave rise to the suit. This was no case of extending the fast land to a bulkhead line fixed by the United States, at the invitation of the United States to improve navigation. In the instant case the whole bank of the river along and near defendants' property has been moved by filling and other improvements substantially to the bulkhead line fixed by the Secretary of War to improve navigation and the District Court saw this when he inspected the property. Also see photograph (R. Vol. IV Ex. I-4)

The Court in the Greenleaf-Johnson case distinguished the case of *Monongahela Navigation Co.* v. *United States,* 148 U. S. 312, 37 L. Ed. 463, on the grounds that the Government had issued an implied invitation to the Monongahela Co. to build the locks and bridge damaged to aid navigation.

The *Monongahela Navigation Co.* case, supra, in which this Court held that the Fifth Amendment compelled compensation, is more in point. There the invitation to improve was a statute of the United States saying that appropriations should not be paid until the Monongahela Co. had finished its lock and dam—an implied invitation. Here there was a clearer invitation to improve. See the language of this Court on pages 324 and 325 of 148 U. S.

It is true that this Court in the *Greenleaf-Johnson* case also mentioned the fact that the improvements of the Monongahela Co. had improved the navigability of the

river, but, as has been heretofore argued, filling in the shallow water of the Potomac to this bulkhead line also improved its navigability. The very purpose for establishing the bulkhead line was to improve navigation.

In the *Belt* case, supra, the District Court held that Belt owned the lots in Square 666 to the highwater line with riparian rights. The United States appealed to the United States Court of Appeals for the District of Columbia. After argument, but before deciding the case, the Court viewed the property. Belt had not exercised his riparian right to fill to the bulkhead line. There was more than 100 feet of water between the shore and the bulkhead line. The Court of Appeals held that those riparian rights were qualified. They were qualified because Belt had not exercised his riparian right to fill. Until the filling was done the Secretary of War could reestablish the bulkhead line in front of his property even as far back as the high water line.

And see *Philadelphia Co.* v. *Stimson,* 223 U. S. 605, 56 L. Ed. 570, at p. 632 and 633 where great emphasis was placed on the fact that when the Secretary of War changed his harbor lines he followed the contours of the bank as it was at the time of the change and where this Court said that the public right of navigation follows the course of the stream.

The decisions of State Courts are in support of the decision of the District Court in the instant case to the effect that a riparian owner of land reclaimed at the invitation of the United States is entitled to compensation under the Fifth Amendment. However, defendants submit that the Supreme Court has not decided this question in a case directly in point; and that it is a question which this Court should decide.

2. OTHER QUESTIONS OF GENERAL IMPORTANCE WERE INCORRECTLY DECIDED WHEN THE DISTRICT COURT HELD THAT THE GOVERNMENT AS A MATTER OF LAW HAD A PROPRIETARY TITLE TO THE LAND UNDERLYING THE POTOMAC AND REJECTED DEFENDANTS' EVIDENCE OF TITLE TO THE CHANNEL, SUBJECT TO THE PUBLIC RIGHTS OF FISHERY AND NAVIGATION.

These questions involve the nature of the Government's right in all navigable waters and its rights in all suits in which it asserts proprietary rights as a private person would do.

There is a great deal of confusion among the decisions dealing with the Government's rights in navigable waters between proprietary rights in the soil under the waters and sovereign rights to govern the waters under the Commerce Clause and it is respectfully submitted that the lower Courts were misled by this confusion and that it should be cleared up by this Court. For instance, one of the cases cited by the District Court in support of its opinion that the United States had title to the bed of the Potomac as a rule of property (R. 105 and 106) was *Smoot Sand & Gravel Corporation* v. *Washington Airport,* 283 U. S. 348, 51 S. Ct. 474, 75 L. Ed. 1109, and that case dealt with sovereign rights alone and not with any title of a private nature.

The right of a private person to acquire title to submerged land subject to the public rights of fishery and navigation has been recognized in many carefully considered cases on navigable waters. These cases are too numerous to brief here but include:

Illinois Cent. R. R. v. *Ill.,* supra, 146 U. S. at p. 452.

Shively v. *Bowlby,* 152 U. S. 1, 13, 14 S. Ct. 548, 38 L. Ed. 331.

Scranton v. *Wheeler,* 179 U. S. 141, 163, 21 S. Ct. 48, 45 L. Ed. 126.

Lewis Blue Point Oyster Co. v. *Briggs,* 229 U. S. 82, 88, 33 S. Ct. 679, 57 L. Ed. 1083.

Philadelphia Co. v. *Stimson,* 223 U. S. 605, 624, 32 S. Ct. 340, 56 L. Ed. 570.

U. S. v. *Chandler-Dunbar Co.,* 229 U. S. 53, 60-63, 33 S. Ct. 667, 57 L. Ed. 1063.

Appleby v. *New York* (1925), 271 U. S. 364, 394, 46 S. Ct. 569, 70 L. Ed. 992.

The quotation in our petition from the 1791 Act of Cession of Maryland shows clearly that the United States acquired no rights in the soil as against the rights of private persons, consequently the evidence of the allotment by the Commissioners to the channel should have been received, as defendants are claiming title to the shallow submerged land, subject to the jus publicum, the public rights of fishery and navigation.

The District Court (and in turn the Court of Appeals) also misapplied the case of *D. C.* v. *Cropley,* 23 App. D. C. 232, in holding that the Commissioners had no authority to convey below the high water mark. In that case the Commissioners were acting under an Act of Congress which gave them no right to convey below the high water mark. In the instant case the Commissioners were a different set of Commissioners entirely appointed by George Washington to lay out the City and carry out the provisions of the Deeds in Trust from the original proprietors. These latter Commissioners had all of the authority conveyed by the deeds in trust as well as those accorded by the Acts of Maryland and of Congress.

The Government with all its resources has a tremendous advantage over a private litigant anyway and when it attacked the allotment to the channel made in 1794 the Courts should have held that it had the burden of proof and that there was a presumption that the allotment was

valid and was supported by a prior right in the original proprietor.

Above cases and:

United States v. *Fullard Leo, et al.*, 133 F. (2d) 743, affirmed 331 U. S. 256, 67 S. Ct. 1287, 91 L. Ed. 1474.

Guaranty Trust Co. v. *United States*, 304 U. S. 126 at p. 134, 58 S. Ct. 785, 82 L. Ed. 1224.

United States v. *Stinson*, 197 U. S. 200, 205, 49 L. Ed. 724, 25 S. Ct. 426.

United States v. *Chavez*, 175 U. S. 509, 44 L. Ed. 255, 20 S. Ct. 159.

United States v. *Chaves*, 159 U. S. 452, 16 S. Ct. 57, 40 L. Ed. 215.

United States v. *Maxwell Land Grant Co.*, 121 U. S. 325, 7 S. Ct. 1015, 30 L. Ed. 949.

C & D Canal v. *United States*, 233 Fed. 926.

United States v. *Belt*, 47 F. Supp. 239.

3. ANOTHER IMPORTANT QUESTION INVOLVES THE CONSTRUCTION OF THE FEDERAL STATUTE OF 1912.

To compel a citizen to undergo a contested valuation hearing is to put him to considerable expense in the way of expert witness fees, attorneys fees and costs not recoverable against the Government. For an equity court which should afford complete relief in a title suit to ignore his contention that it is not a condemnation suit and incorporate the values in a final decree (R. 124 par. 8) is to leave him with a cloud on his title which can only be removed after a long time and at considerable expense. Any title company would report this title as subject to the Government's possible right to take it for the value fixed. For many reasons too numerous to go into except in a

hearing on the merits petitioners contend that the valuation hearing should never have been held. These reasons involve the construction of the statute, the construction of acts of Congress of condemnation and repealing acts of condemnation and the contention that the valuation portion of the statute was abandoned by failure to pray for valuation in the bill and allowing it to remain pending from 1912 to 1946, 34 years.

The substantial results of plaintiff's actions and those of the Courts is to take defendants' property without compensation and to deny them the due process of law guaranteed by the Fifth Amendment.

See *United States* v. *Causby,* 328 U. S. 256, 66 S. Ct. 1062, 90 L. Ed. 1206, and

Portsmouth Co. v. *United States,* 260 U. S. 327, 43 S. Ct. 135, 67 L. Ed. 287.

After defendants' property had been tied up for thirty-four years the Court in the valuation hearing allowed inadmissable and rejected admissable evidence and found the lowest valuation possible.

4. THERE IS ALSO AN IMPORTANT QUESTION HERE AS TO WHETHER THE MODERN TENDENCY OF THE CIRCUIT COURTS OF APPEAL TO SHORTEN THEIR OPINIONS HAS GONE TOO FAR.

All the above points were made and carefully briefed by defendants in their cross-appeal. The Court of Appeals ignored most of them in its opinion. The important question of the effect of the valuation of defendants' property was an issue necessary to be decided in order to clear up all questions affecting title.

Conclusion

The above questions involving the respective rights of this Government and its citizens to the shores and the lands below navigable waters and the construction and effect of the Rivers and Harbors Act and the Constitution have never been clearly settled by this Court. It is of the utmost importance to the nation that they be settled and that the writ of certiorari be granted.

Respectfully submitted,

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APPENDIX

The Act of April 27, 1912, 37 Stat. 93, provides as follows:

An Act Providing for the protection of the interests of the United States in lands and waters comprising any part of the Potomac River, the Anacostia River or Eastern Branch, and Rock Creek and lands adjacent thereto.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That for the purpose of establishing and making clear the title of the United States it shall be the duty of the Attorney General of the United States to institute as soon as may be, or whenever in his judgment it is deemed proper, a suit or suits in the Supreme Court of the District of Columbia against all persons and corporations, or others, who may have, or pretend to have, any right, title, claim, or interest adverse to the complete title of the United States in and to any part or parcel of the land or water in the District of Columbia in, under, and adjacent to the Potomac River, the Anacostia River or Eastern Branch, and Rock Creek, including the shores and submerged or partly submerged land, as well as the beds of said waterways, and also the upland immediately adjacent thereto, including made lands, flats, and marsh lands.

SEC. 2. That the suit or suits mentioned in the preceding section shall be in the nature of a bill in equity, and there shall be made parties defendant thereto all persons and corporations, or others, known to set up or assert any claim or right to or in the land or water in said preceding section mentioned, and against all other persons and corporations, or others, who may claim to have any such right, title, or interest. On the filing of said bill process shall issue and be served, according to the ordinary course of said court, upon all persons and corporations, or others, within the jurisdiction of said court; in case said land is in actual adverse possession to the United States notice shall be served on the parties in actual possession, and public

notice shall be given, by advertisement in two newspapers published in the city of Washington, for three weeks successively, of the pendency of said suit, and citing all persons and corporations, or others interested in the subject matter of said suit or in the land or water in this Act mentioned, to appear, at a day named in such notice, in said court to answer the said bill and set forth and maintain any right, title, interest, or claim that any person or corporation, or others, may have in the premises; and the court may order such further notice as it shall think fit to any party in interest.

SEC. 3. That the said cause shall then proceed with all practicable expedition to a final determination by said court of all rights drawn in question therein, and the said court shall have full power and jurisdiction by its decrees to determine every question of right, title, interest, or claim arising in the premises and to vacate, annul, set aside, or confirm any claim of any character arising or set forth in the premises; and its decree shall be final and conclusive upon all persons and corporations, or others, parties to the suit, or who shall fail, after public notice as hereinbefore in this Act provided, to appear in said court and litigate his, her, their, or its claim, and they shall be deemed forever barred from setting up or maintaining any right, title, interest, or claim in the premises.

SEC. 4. That if on the final hearing of said cause the said Supreme Court of the District of Columbia shall be of opinion that there exists any right, title, or interest in the land or water in this Act mentioned in any person, or corporation, or others, adverse to the complete and paramount right of the United States, the said court shall forthwith and in a summary way proceed to ascertain the value of any such right, title, interest, or claim, exclusive of the value of any improvement to the property covered by such right, title, or interest made by or under the authority of the United States, and report thereof shall be made to the Congress.

SEC. 5. That from the final decree of the Supreme Court of the District of Columbia, and every part thereof in the premises, an appeal shall be al-

lowed to the United States, and to any other party in the cause complaining of such decree, to the Supreme Court of the United States, which last-mentioned court shall have full power and jurisdiction to hear, try, and determine the said matter, and every part thereof, and to make final decree in the premises; and the said cause shall, on motion of the Attorney General of the United States, be advanced to the earliest practicable hearing.